IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1418 of 1999

in

SPECIAL CIVIL APPLICATION No 9158 of 1997

with

CIVIL APPLICATION No 13077 of 1999

and

LETTERS PATENT APPEAL No 1908 of 1999

in

SPECIAL CIVIL APPLICATION No 9158 of 1997

with

CIVIL APPLICATION No.15450 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARKHEJ OKAF NAGARPALIKA

Versus

SOMABHAI BHAISHABHAI THAKORE

Appearance:

LPA No 1418 of 1999:

MR PARESH UPADHYAY for Appellant

MR MUKUL SINHA WITH MR VJ THAKORE for Respondent No. 1

MR VM PANCHOLI, AGP, for Respondent No. 2

LPA No 1908 of 1999:

MR MUKUL SINHA WITH MR VJ THAKORE for the appellant.

MR PARESH UPADHYAY for respondent No.1

MR VM PAHCNOLI, AGP, for respondent No.2.

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE D.P.BUCH

Date of decision: 07/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Both these Letters Patent Appeals under clause 15 of the Letters Patent arise out of one common judgment and order recorded by the learned single Judge, on 15.8.99, in Special Civil Application No.9158 of 1997, whereby, the writ petition, at the instance of the Nagarpalika came to be partly allowed and the order of the Director of Municipalities, Gujarat State, dated 17th November, 1997 passed in Appeal No.881/97 came to be quashed and set aside with a direction to hold inquiry de novo and with a further direction that the delinquent-employee shall remain under suspension during the period of fresh round of inquiry.

Being aggrieved by the directions adverse to the original parties, both of them have filed Letters Patent Appeals. LPA No.1418/99 is filed by Sarkhej-Okaf Nagarpalika, whereas, LPA No.1908/99 is filed by the employee, Somabhai Thakore. In view of the fact that common questions are involved and upon joint request, both the appeals are being disposed of by this composite judgement.

Learned counsel appearing for the employee, Somabhai Thakore, has not disputed the unauthorised absence from

service as per the chargesheet dated 19.3.97. However, he has raised contention with regard to quantum of punishment. In other words, it is contended that the order of removal, dated 25.7.97, from the service passed against the employee, who was, working as a Junior Clerk in the Nagarpalika, at the relevant time, is disproportionate to the proved delinquency and, therefore, it is extremely harsh. Learned advocate appearing for the Nagarpalika, Mr Upadhyay, has, also, in his candid and fair submission stated that the impugned order of removal on the ground of unauthorised absence from service may be substituted by an appropriate order in the light of the facts and circumstances that may be found expedient by the Court.

Precisely, for the aforesaid very clear, candid and fair submissions raised before us, we would not be detained any longer in analysing and evaluating the merits of both the appeals, and therefore, it would not be necessary to highlight all the facts and circumstances leading to the rise of this group of two LPAs.

In view of the fair submissions raised on behalf of the employee, Somabhai Thakore, the judgment and order of the learned single Judge and also the order dated 17.11.97 in Appeal No.881/97 of the Director of Municipalities, Gujarat State, are required to be quashed and set aside. Therefore, aforesaid orders shall stand quashed and set aside, restoring the order dated 25.7.97 to the extent of establishment of delinquency for remaining unauthorisedly absent from service.

Obviously, therefore, now the question which is required to be considered is about the quantum of punishment, or in other words, the proportionality of punishment. Undoubtedly and very fairly it is submitted that the extreme penalty of removal from service in view of the delinquency established on the part of the workman-employee is excessive and harsh. Therefore, that order shall stand quashed and set aside. What should the just and reasonable punishment in the light of the delinquency of the workman will be the last question to be addressed by us.

After taking into account the fact situation, the period of service put in by the employee of more than 20 years, before the initiation of inquiry, the extent and type of the delinquency and other relevant aspects, the ends of justice will be met, if two increments are allowed to be withheld without future effect with a further direction of payment of 50 per cent backwages from the date of

removal of the employee till the date of reinstatement. Therefore, while quashing and setting aside the order of removal, it shall stand substituted by withholding two increments without future effect and the 50 per cent backwages from the date of removal till the date of reinstatement. Obviously, in view of the quashing of the removal order, the employer shall reinstate the employee on or before 1st January, 2001.

In the result, the impugned order of removal dated 25.7.97 shall stand quashed and set aside and the employee shall be reinstated with continuity of service, including the period of suspension. Two increments of the employee shall be withheld without future effect. He shall be paid fifty per cent of the backwages during the period from the date of removal till reinstatement, as expeditiously as possible, but not later than three months from today. Both the appeals shall stand, partly, allowed to the aforesaid extent without any order of costs.

(J.N.Bhatt , J.)

(D.P.Buch, J.)
(vjn)